

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LA CENA FINE FOODS, LTD.,)
)
)
Plaintiff,)
)
v.)
)
)
JENNIFER FINE FOODS,)
SUPER-SUPER MARKET of Paterson,)
New Jersey, SUPER-SUPER MARKET)
of Union City, New Jersey,)
SUPER EXTRA and)
POMODORO FOODS, INC.,)
)
)
Defendants.)

Civil Action No.: 01-cv-5746 (JLL)

**ORDER FOR SUMMARY JUDGMENT
AND PERMANENT INJUNCTION
AGAINST DEFENDANT,
JENNIFER FINE FOODS**

LINARES, District Judge.

This matter having been opened to the Court by Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein, counsel for Plaintiff, La Cena Fine Foods, Ltd. ("La Cena") (John M. Agnello, Esq. and David G. Gilfillan, Esq. appearing), on notice to Donald R. Heiner, Esq., appearing for Defendant, Jennifer Fine Foods ("Jennifer"), seeking an Order for summary judgment as to Counts I, II, III and IV of La Cena's Amended Complaint, and the Court having found that U.S. Trademark Registration No. 1,944,805 for the mark VICTORINA® was duly issued on January 2, 1996 and that an affidavit of continuous use and incontestability was filed in a timely manner under 15 U.S.C. §§ 1058, 1065 and 1115(b), thereby making the mark incontestable, and the Court having found that the trademark VICTORINA® is a valid, legally protectible trademark, that the trademark VICTORINA® is owned by La Cena, and that any use by Jennifer of the trademark VICTORINA® is likely to cause confusion, and the Court having

considered these papers submitted by the parties, and, for the reasons set forth in the accompanying Opinion dated July 17, 2006;

IT IS on this 17th day of July, 2006

ORDERED AND ADJUDGED as follows:

1. La Cena's Motion for Summary Judgment as to the liability of Jennifer regarding the First Count of the Amended Complaint be and is hereby granted;

2. La Cena's Motion for Summary Judgment as to the liability of Jennifer regarding the Second Count of the Amended Complaint be and is hereby granted;

3. La Cena's Motion for Summary Judgment as to the liability of Jennifer regarding the Third Count of the Amended Complaint be and is hereby granted;

4. La Cena's Motion for Summary Judgment as to the liability of Jennifer regarding the Fourth Count of the Amended Complaint be and is hereby granted;

In view of the foregoing, and La Cena's withdrawal of its claim for damages against Jennifer, it is hereby **ORDERED, ADJUDGED** and **DECREED** that:

5. Jennifer, its shareholders, officers and directors of it, including but not limited to its agents, servants, employees, successors and assigns and all others in control of the foregoing or under the control of the foregoing, as well as all others in concert or in privity with the foregoing who receive actual notice of this Order (the "Enjoined Parties"), be and are hereby permanently enjoined from:

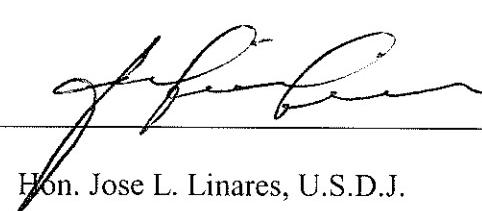
A. Using La Cena's trademark VICTORINA® (United States Trademark registration No. 1,944,805), or any derivative or shorthand notation thereof, or any term confusingly similar thereto, in connection with the sale of tomato paste or other food products, which use would give rise to a

likelihood of confusion, mistake or deception between such tomato paste or other food products sold or offered for sale by the Enjoined Parties and the tomato paste or other food products sold, offered for sale or distributed by La Cena;

- B. Soliciting any business through the use of La Cena's trademark VICTORINA®;
- C. Passing itself, himself or herself off as being associated or affiliated with La Cena; and
- D. Using, in connection with the sale of tomato paste or other foods products, any labels and/or trade dress which would associate the tomato paste or other food products sold or offered for sale by the Enjoined Parties with tomato paste or other food products sold, offered for sale or distributed by La Cena including, but not limited to, the trade dress depicted on Exhibit A attached hereto.

6. This Court retains jurisdiction, and shall have exclusive jurisdiction, of this matter for purposes of the continued enforcement of the terms of this Order.

7. A copy of this Order shall be served by counsel for La Cena upon all parties to this action within 7 days of the date of this Order.



Hon. Jose L. Linares, U.S.D.J.